

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

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UNITED STATES OF AMERICA,

Plaintiff

v.

MIDWEST FIREWORKS MANUFACTURING
CO., INC., FIREWORKS OF AMERICA LTD
CORP., PACIFIC FINANCIAL SERVICES OF
AMERICA; and LARRY LOMAZ,

Defendants

Case No. 5:99 CV 2240

Judge Gwin

Magistrate Judge Gallas

CONSENT DECREE

On September 20, 1999, the United States (the "Government") commenced an action against Midwest Fireworks Manufacturing Co., Inc., Fireworks of America LTD Corp., Pacific Financial Services of America, Inc. and Larry Lomaz (collectively, the "Defendants") for violations of 15 U.S.C. §§ 1263(a) and (c) by introducing, delivering for introduction, and receiving in interstate commerce fireworks which were banned or misbranded hazardous substances. The Court granted the Government's Motion for a Permanent Injunction, and entered an Amended Order of Permanent Injunction on January 27, 2000 ("Permanent Injunction").

Plaintiff and Defendants now have agreed to the present Consent Decree and Plaintiff has agreed not to file a Motion To Show Cause Why Defendants Should Not Be Held In Civil Contempt based upon Defendants' conduct from January 27, 2000, until entry of this Consent Decree, which supplements the Permanent Injunction. Defendants have consented to the entry of this Consent Decree in settlement of the contemplated Motion to Show Cause, without admitting

that they were ever in contempt of the Amended Order of Permanent Injunction.

THEREFORE, on the joint motion of the parties, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter and the parties.

I. DEFINITIONS

2. For purposes of this Consent Decree, the following terms have the following meanings:

A. "Defendants" are Midwest Fireworks Manufacturing Co., Inc., Fireworks of America LTD Corp., Pacific Financial Services of America, Inc. and Larry Lomaz.

B. "Fireworks Devices" means "explosive materials" as that term is defined in Title 18, United States Code, Chapter 40 and List of Explosive Materials, 63 Fed. Reg. 24, 207 (May 1, 1998), as well as any devices labeled as "1.3 G", "1.4G", "special fireworks", "Class B fireworks", "Class C fireworks", "common fireworks", "consumer fireworks", "display fireworks", and/or UN0333, UN0334, UN0335, UN0336.

C. "Permanent Injunction" means the Amended Order of Permanent Injunction entered by this Court on January 27, 2000.

D. "Related Persons" means each and all of Defendants' directors, officers, agents, representatives, employees, assigns, and any or all persons or entities in active concert or participation with any of them, and having anything to do with the import, sale or distribution of fireworks devices. "Related Persons" expressly includes Midwest Fireworks Manufacturing Co. II, Inc. and each and all of its directors, officers, agents, representatives, employees, successors, assigns, and any or all persons or entities in active concert or participation with it.

II. RELIEF

3. Defendants shall destroy, or in the alternative, re-export, all remaining (in his actual or constructive possession): (1) 3rd Generation fireworks devices that were imported in Container Number HDMU6043070 and (2) Spring Thunder fireworks devices described in the Letter of Advice from the United States Consumer Product Safety Commission ("CPSC") dated August 2, 2002. Such destruction or re-exportation shall occur within ninety (90) calendar days of the entry of this Consent Decree. Such destruction or re-exportation shall be at Defendants' expense and in accordance with all local, state and federal laws. Defendants shall notify any receiver of the Defendants' property and the United States Bankruptcy Court for the Northern District of Ohio that these fireworks devices are banned hazardous substances and therefore should not be sold by Defendants or any receiver of the Defendants' property. If Defendants decide to destroy all remaining fireworks devices identified in this Paragraph, they shall notify the CPSC at least seven (7) calendar days prior to such destruction, permit CPSC staff to witness the destruction, and promptly document such destruction to the CPSC by sworn statement. Alternatively, if Defendants decide to re-export all remaining fireworks devices identified in this Paragraph, they shall notify the CPSC of such a decision within thirty (30) calendar days of the entry of this Consent Decree. Such re-exportation must be in accordance with the provisions of 16 C.F.R. Part 1019 – Export of Noncomplying, Misbranded, or Banned Products.

4. Defendants shall provide the CPSC, within thirty (30) calendar days of entry of this Consent Decree, with: (a) a current mailing address where certified mail will be accepted on behalf of each Defendant; (b) a current telephone number for each Defendant; (c) a current fax number for each Defendant; and (d) a current e-mail address for each Defendant. Defendants

shall inform the CPSC by facsimile or overnight express mail of any changes of the information required in this Paragraph within seven (7) calendar days of a change in such information. If any of the information required in this Paragraph does not exist, then Defendants are not obligated to provide such information. If Defendants subsequently obtains such information, Defendants shall inform the CPSC by facsimile or overnight express mail of such new information within thirty (30) calendar days.

5. Defendants shall provide the CPSC, within thirty (30) calendar days of entry of this Consent Decree, with the address and phone number of all subsidiaries, retail establishments or other entities in active concert or participation with the Defendants' import, sale or distribution of fireworks devices.

6. Defendants shall test all fireworks devices imported by Defendants or Related Persons from China. Such testing shall be performed by the American Fireworks Standards Laboratory ("AFSL"). Defendants shall not import any fireworks devices that fail such testing. Such testing shall be at Defendants' expense. To the extent that AFSL does not test a particular type of fireworks device, Defendants are not obligated to have such fireworks devices tested by AFSL. This Paragraph shall take effect for any order of fireworks devices placed by Defendants or Related Persons after July 5, 2003.

7. Defendants shall notify the CPSC by facsimile or overnight express mail within two (2) business days of Defendants being informed by any person that a shipment of fireworks devices ordered by Defendants or Related Persons is scheduled to arrive in the United States. Such notification must include all information received by Defendants, including, but not limited to, the date the shipment is scheduled to arrive and where the shipment is scheduled to arrive.

8. Defendants shall notify the CPSC by facsimile or overnight express mail within two (2) business days of Defendants being informed by any person that a shipment of fireworks devices ordered by Defendants or Related Persons has arrived in the United States. Such notification must include all information received by Defendants, including, but not limited to, the date the shipment arrived, where the shipment arrived, and an invoice of the fireworks devices contained in that shipment. Such invoice must identify the fireworks devices by their common names or the names typically used in the fireworks industry.

9. In the event that fireworks devices are released under a conditional bond by the United States Customs Service ("Customs Service"), Defendants and Related Persons shall not display, sell, give away or otherwise distribute such fireworks devices until after Defendants have been notified that the conditional bond is no longer in effect.

10. In the event that fireworks devices are not sampled by the CPSC prior to the fireworks devices being released by the Customs Service, Defendants shall notify the CPSC by facsimile or overnight express mail within two (2) business days of such fireworks devices being released.

11. Defendants and Related Persons shall respond to all Letters of Advice from the CPSC within the time specified in the Letter of Advice. Further, Defendants and Related Persons shall notify the CPSC within the time specified in the Letter of Advice and pursuant to the terms of the Letter of Advice, what action Defendants and Related Persons will take in response to the Letter of Advice.

III. DISGORGEMENT OF PROCEEDS

12. Defendants shall disgorge thirty thousand dollars (\$30,000) as proceeds of their

post January 27, 2000 sale of 3rd Generation, Super Stallion, Air Thunder Double Break and Pro-Mag fireworks devices. Each Defendant shall be jointly and severally liable for payment of the foregoing disgorgement amount. This order for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture. Payment shall be made as follows: Within one hundred eighty (180) calendar days of the entry of this Consent Decree, Defendants shall deliver a payment of ten thousand dollars (\$10,000), in the form of a certified or cashier's check made payable to the Treasurer of the United States. Within two hundred and ten (210) calendar days of the entry of this Consent Decree, Defendants shall deliver a second payment of ten thousand dollars (\$10,000), in the form of a certified or cashier's check made payable to the Treasurer of the United States. Within two hundred and forty (240) calendar days of the entry of this Consent Decree, Defendants shall deliver a final payment of ten thousand dollars (\$10,000), in the form of a certified or cashier's check made payable to the Treasurer of the United States. All such certified or cashier's checks shall be delivered to the attention of: Director, Office of Consumer Litigation, Civil Division, Department of Justice, Washington, D.C. 20530. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment, and shall immediately become due and payable by the Defendants.

IV. COMPLIANCE PROGRAM

13. Defendants shall establish and provide to the CPSC, within thirty (30) calendar days of entry of this Consent Decree, a written compliance program ("compliance program") that specifies the procedures Defendants will follow upon receiving: (a) any information that a shipment from China of fireworks devices for Defendants or Related Persons is scheduled to

arrive or has arrived in the United States; and (b) a Letter of Advice from the CPSC that a shipment Defendants or Related Persons received from any source violates any provisions of the Federal Hazardous Substances Act ("FHSA").

14. Defendants must distribute to each of its employees and any other Related Person, within forty-five (45) calendar days of entry of this Consent Decree, a copy of: (a) the Permanent Injunction; (b) this Consent Decree; and (c) Defendants' compliance program. No later than ten (10) calendar days after a person begins performance of his or her duties as a new employee of Defendants or a Related Person, Defendants must provide that person with a copy of: (a) the Permanent Injunction; (b) this Consent Decree; and (c) Defendants' compliance program. Defendants must obtain an executed certificate acknowledging the receipt of these materials by each and every person covered in this Paragraph.

15. Defendants must take disciplinary action against any person under its control who refuses or fails to comply with the Permanent Injunction or this Consent Decree.

16. Defendants shall provide written notification to the CPSC at least twenty (20) calendar days before any change in ownership or character of Midwest Fireworks Manufacturing Co., Inc., Fireworks of America LTD Corp., Pacific Financial Services of America, Inc. or Midwest Fireworks Manufacturing Co. II, Inc., such as dissolution, assignment, or sale resulting in the emergence of a successor corporation; the creation or dissolution of subsidiaries; any other change in corporate structure; the sale or assignment of any business assets, such as buildings, equipment, or inventory, that may affect compliance with this Consent Decree; or any relocation.

V. GENERAL PROVISIONS

17. Defendants may petition this Court to rescind the provisions of this Consent

Decree after a period of five (5) years from the entry of this decree. The Government may oppose Defendants' petition. If there is no breach of the provisions of this Consent Decree by Defendants prior to the filing of a petition to rescind the provisions of the Consent Decree, the Government will give serious consideration to the lack of a breach in deciding whether to oppose Defendants' petition.

18. This Consent Decree is in addition to all of the provisions of the Permanent Injunction, which remains in effect.

19. All notifications, correspondence, and communications, including overnight express mail, to the CPSC required by this Consent Decree shall reference this civil action number and shall be addressed to:

Regional Director
U.S. Consumer Product Safety Commission
Room 2944
230 S. Dearborn St.
Chicago, Illinois 60604

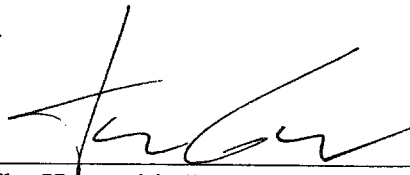
20. All facsimiles required by this Consent Decree to the CPSC shall reference this civil action number and shall be faxed to:

Regional Director
U.S. Consumer Product Safety Commission
312-353-5013

21. If any Defendant violates this Consent Decree and is found in civil or criminal contempt thereof, the Defendants shall, in addition to other remedies, be jointly and severally liable for a maximum civil penalty of \$5,000 per day for each day a Defendant is in violation.

22. This Court retains jurisdiction to enforce the provisions of this Consent Decree.

Dated this 29 day of May, 2003.

A handwritten signature in black ink, appearing to read 'J. Gwin', written over a horizontal line.

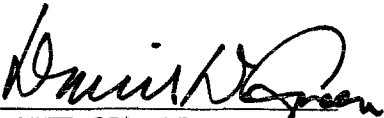
The Honorable James S. Gwin
United States District Judge

We hereby consent to the entry of the foregoing Decree.

Respectfully submitted,

FOR DEFENDANTS:

FOR PLAINTIFF:



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LARRY LOMAZ

As President of Midwest

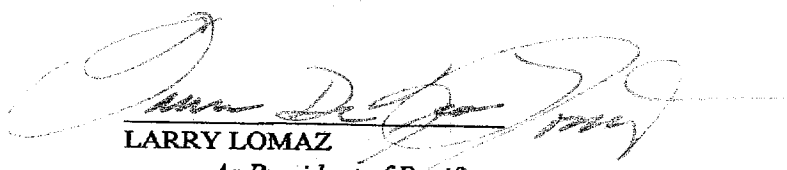
Fireworks Manufacturing

Co., Inc.



LARRY LOMAZ

*As President of Fireworks of America
LTD Corp.*



LARRY LOMAZ

*As President of Pacific
Financial Services of
America, Inc.*



LARRY LOMAZ

*As President of Midwest
Fireworks Manufacturing
Co. II, Inc.*